

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the
Commission's Future Energy Efficiency Policies,
Administration and Programs.

Rulemaking 01-08-028
(Filed August 23, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING THE MOTION OF WOMEN'S ENERGY MATTERS AND DENYING
PACIFIC GAS AND ELECTRIC COMPANY'S MOTION TO QUASH**

Summary

This ruling responds to separate motions by Women's Energy Matters (WEM) and Pacific Gas and Electric Company (PG&E). WEM filed its motion on December 2, 2002 seeking a variety of Commission actions, which WEM believes are required in order to eliminate what WEM alleges are conflicts of interest between utilities and consulting companies hired to evaluate utility energy efficiency programs. PG&E and Southern California Edison Company (Edison) filed responses to WEM's motion and associated allegations regarding the conduct of utilities and consultants who conduct evaluation, measurement and verification (EM&V) studies.

Among the remedies WEM requests is a ruling requiring the Utilities to respond to a data request seeking information about the utilities' meetings with consulting companies. In response to WEM's motion, PG&E filed a motion to quash, arguing that WEM's data request is improper.

1. WEM's Motion

WEM's motion alleges that utilities and some EM&V consultants have a conflict of interest. Specifically, WEM alleges several examples of misconduct:

- Auditors under contract to evaluate energy efficiency programs took gifts from PG&E in the form of lodging and meals for a conference held at an expensive venue;
- WEM was excluded from California Measurement Advisory Committee (CALMAC) meeting because the utilities do not inform members of this service list of this proceeding, potentially limiting the number of contractors who could bid on the contracts.

WEM believes these acts and omissions are evidence that the utilities have favored certain contractors and conduct business with those contractors inappropriately. To address this issue, WEM asks the Commission to provide the following relief:

- Order the utilities to notify this service list of all meetings of CALMAC and other energy efficiency organizations;
- Order the utilities to convene another CALMAC meeting on subjects discussed at the November 20, 2002 meeting for which WEM did not receive notice;
- Order the utilities to notify the service list of this proceeding of Request for Proposals (RFPs) and how to access them;
- Order the utilities to respond to WEM's data request, which seeks information about utility meetings with consultants conducting program audits and evaluations;
- Extend the time for submitting qualifications for statewide studies by one month and extend by one month the time for submitting proposals, and extend the deadline for spending

evaluation, measurement and verification funds by two months after the close of bidding to provide more time to review proposals’

- Prohibit consultants from performing audits of EE programs and other consulting services to utilities.

PG&E responds to WEM’s motion by arguing that WEM has provided no evidence of impropriety with regard to relationships between consultants and utilities. PG&E argues WEM makes an improper collateral attack on the structure of the CALMAC, which the Commission created as an informal group, rather than an advisory committee (D.00-05-019). PG&E objects to WEM’s proposal to participate on CALMAC. It argues that parties have received appropriate notice of consulting opportunities and meetings. Edison makes similar comments and provides more background on the circumstances of the cited CALMAC meetings.

CALMAC Meetings and Expenses. CALMAC is an informal organization and therefore is not required to conduct itself according to state meeting laws or procedures. Nevertheless, utility customers fund it. It is therefore accountable to the public, of which WEM is a member. Although circumstances appear to have made it difficult for WEM to attend one meeting, CALMAC appears to have provided proper notice of meetings and has provided information publicly. Edison states its intent to notify parties to this service list of future CALMAC meetings. Because it is funded by the public goods charge, CALMAC may not, as PG&E suggests, exclude interested parties from meetings, conferences or gatherings where its members are discussing matters relevant to its public mission.

Turning to the matter of conference expenses, WEM argues that neither the utilities nor CALMAC should sponsor multi-day conferences in expensive venues and charge the costs to public goods charge accounts. It argues that utilities should not reimburse consultants of their choice to attend CALMAC conferences. Such practices may create an appearance of conflict and undermine public confidence in the Commission's oversight of program funding. Upcoming audits will address whether the utilities have appropriately spent public goods charges.

PG&E objects to WEM's participation on CALMAC by arguing that WEM has no technical expertise and has not followed a proper process. As an active participant in Commission energy efficiency proceedings, WEM is a "stakeholder" and would not need particular expertise to contribute to the discussion of ways to evaluate energy efficiency programs. If the process for joining CALMAC suggests CALMAC is an exclusive club, perhaps the Commission should reconsider the funding for and activities of the CALMAC.

PG&E and Edison observe correctly that WEM has provided no evidence of unlawful activity. The Commission does rely on members of the public to assist in identifying improper utility activities. If WEM has evidence to suggest unlawful activity, it should bring the matter to the Commission's attention or present the evidence as part of a formal complaint.

Contracting Procedures. WEM is concerned that the utilities are managing consultants hired to evaluate utility performance. Logically, consultants hired to critique a utility's program should not also act as a consultant to the same utility on other matters. Many of WEM's concerns are likely to be obviated in the future. The Commission intends to hire and manage

such contracts internally. In that context, Commission staff is considering ways to assure consultants do not have conflicts of interest.

Although the Commission has completed the process for hiring consultants for the 2002 programs, it has just initiated the process for hiring consultants to evaluate 2003 programs. Utilities should provide RFPs to any interested party, whether or not they appear to be qualified. They should notify those included on the service list of this proceeding of all RFPs for energy efficiency contracts.

2. PG&E's Motion to Quash

PG&E filed a motion to quash the data request submitted by WEM as part of its December 2 motion. PG&E argues the data request is burdensome and will not lead to the discovery of admissible evidence. PG&E claims that the Commission requires parties to present existing documents in discovery but has never required a party to create a new document. Edison's response to the WEM motion also objects to the data request on the basis that it would not lead to the discovery of admissible evidence.

This ruling denies PG&E's motion. PG&E is not correct that the Commission has never required a party to compile a summary of facts in a single document. Utilities are routinely called upon to produce tables, narratives and reports in response to data requests. WEM's request does not appear to be unusual in that regard. PG&E's motion is premature because it is customary for parties to meet and confer on discovery disputes. If WEM wishes to pursue its data request, it should request a meeting with utility representatives.

Nevertheless, the data request is, as the utilities claims, overboard. Critically, WEM has not specified how the material is likely to lead to the discovery of admissible evidence. If WEM and the utilities cannot informally

resolve this discovery dispute, WEM may make a motion to compel production of materials. That motion should address how the material would be useful in the Commission's pursuit of law enforcement and its policies.

WEM's discovery request or motion to compel production should not, however, delay scheduling of the Annual Earnings Assessment Proceedings, currently consolidated in A.01-05-003 et al., or the development of energy efficiency and low-income assistance programs in their respective rulemakings.

IT IS RULED that:

1. Women's Energy Matter's motion dated December 2, 2002 is denied.
2. Pacific Gas and Electric Company's motion to quash dated December 17, 2002 is denied.

Dated March 19, 2003, at San Francisco, California.

/s/ KIM MALCOLM

Kim Malcolm
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying the Motion of Women's Energy Matters and Denying Pacific Gas and Electric Company's Motion to Quash on all parties of record in this proceeding or their attorneys of record.

Dated March 19, 2003, at San Francisco, California.

/s/ CLAIRE JOHNSON

Claire Johnson

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

